

Subchapter 3 EXCEPTIONS, WAIVERS, AND SPECIAL AREA STANDARDS

5:21-3.1 Exceptions

- (a) The municipal approving authority may grant such *de minimis* exceptions from the requirements of the site improvement standards as may be reasonable, and within the general purpose and intent of the standards if the literal enforcement of one or more provisions of the standards is impracticable or will exact undue hardship because of peculiar conditions pertaining to the development in question.
- (b) An application for an exception pursuant to this section shall be filed in writing with the municipal approving authority and shall include:
 - 1. A statement of the requirements of the standards from which an exception is sought;
 - 2. A statement of the manner by which strict compliance with said provisions would result in practical difficulties; and
 - 3. A statement of the nature and extent of such practical difficulties.
- (c) Exceptions shall become a part of the construction documents and shall be retained by the municipal approving authority.
- (d) Within 30 days of granting a *de minimis* exception request, a municipal approving authority agreeing to an exception pursuant to this section shall send a copy of the document(s) constituting the *de minimis* exception resolution and/or document to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, Post Office Box 802, Trenton, NJ 08625-0802. Such notice shall be clearly marked "Site Improvement Exception(s)."
- (e) An application for an exception may also be made by an officer or agency of the municipality.
- (f) Examples of *de minimis* exceptions include, but are not limited to, the following:
 - 1. Reducing the minimum number of parking spaces and the minimum size of parking stalls;
 - 2. Reducing the minimum geometrics of street design, such as curb radii, horizontal and vertical curves, intersection angles, centerline radii, and others;
 - 3. Reducing cartway width; and
 - 4. Any changes in standards necessary to implement traffic calming devices.
- (g) The municipal approving authority's granting of a request for a *de minimis* exception shall be based on a finding that the requested exception meets the following criteria:
 - 1. It is consistent with the intent of the Site Improvement Act;
 - 3. It is reasonable, limited, and not unduly burdensome;
 - 3. It meets the needs of public health and safety; and

4. It takes into account existing infrastructure and possible surrounding future development.

5:21-3.2 Waiver Request

- (a) A municipality or developer may, in connection with a specific development, request a waiver of any site improvement standard adopted under this chapter in accordance with N.J.S.A. 40:55D-40.4(c). A waiver request may also be made jointly by a municipality and a developer.
- (b) The Site Improvement Advisory Board may approve a request for a waiver based on any danger to public health and safety that would be caused by adherence to a standard specified in this chapter.
- (c) A waiver may be requested by a municipality or a developer, or the request may be made jointly. The waiver request shall consist of the following:
 1. A copy of the development application as submitted to the municipal approving authority; and
 2. A brief memorandum to the Commissioner of the Department of Community Affairs containing sufficient information upon which to base a determination, including:
 - i. A short description of the project in narrative form;
 - ii. A citation to the particular site improvement standard from which waiver is requested;
 - iii. A clear description of the condition(s) giving rise to the request;
 - iv. A clear description of the anticipated result if the standard were to be followed;
 - v. The name, address, and telephone number of a contact person for the developer; and
 - vi. The name, address, and telephone number of a contact person for the municipal approving authority.
- (d) The party requesting the waiver shall send the request to the New Jersey Department of Community Affairs, Division of Codes and Standards, 101 South Broad Street, Post Office Box 802, Trenton, NJ 08625-0802.
- (e) Where a waiver is requested by the developer, the developer shall send a copy of the request to the administrative officer of the municipality concerned. Where a waiver is requested by the municipality, the municipality shall send a copy of the request to the developer.
- (f) A waiver may be requested by the developer or the municipal approving authority at any time during the pendency of a development application. The Site Improvement Advisory Board recommends submission of a waiver request early in the application process or prior to the submission of a formal development application. If the applicant or the

municipal approving authority determines during the planning board review process that a waiver request is appropriate, the municipal approving authority shall give consideration whenever possible to the granting of an extension for the purpose of pursuing a waiver. In some cases, it may be impracticable for the party requesting or appealing a waiver to complete the waiver process within the time guidelines of the Municipal Land Use Law [N.J.S.A. 40:55D-1 et seq.; see, for example, N.J.S.A. 40:55D-45.3, 46(c), 46.1, 47, 48, and 50]. In such cases, the municipal approving authority may provide for the disposition of the waiver as a condition of its approval.

- (g) There is no fee for requesting a waiver.

5:21-3.3 Waiver Review

- (a) The Commissioner shall review the waiver request to determine whether it appears on preliminary review that adherence to a particular standard would jeopardize the public health and safety.
 - 1. If the waiver request on its face does not meet the requirements of this subsection, the Commissioner shall contact the requesting party within 20 days of receipt of the request and advise the requesting party of the waiver request rejection. Grounds for rejection shall be indicated in writing.
- (b) Within 20 days of receipt of a waiver request, the Commissioner shall date and mark as justified for review each waiver request accepted for review. The Commissioner shall then direct each such waiver request to the Site Improvement Advisory Board's technical committee which consists of Board members who represent the New Jersey Society of Professional Engineers, the New Jersey Society of Municipal Engineers, and the New Jersey Builders Association [see N.J.S.A. 40:55D-40.4(c)].
- (c) The Commissioner shall send notice of the Commissioner's determination of justification to designated contacts at the same time as the waiver request is sent to the technical committee.
- (d) The technical committee shall render a decision by resolution within 30 days of the Commissioner's determination that the waiver request is justified.
- (e) A waiver resolution adopted by the committee shall specify the grounds for granting or denying the waiver request.
- (f) The Commissioner shall promptly notify the developer and the municipal approving authority of the committee's decision, and shall provide a copy of the resolution memorializing such decision to those parties and to the Site Improvement Advisory Board.

5:21-3.4 Appeal of Waiver Decisions

- (a) Any decision of the technical committee may be appealed to the Site Improvement Advisory Board. The party wishing to appeal shall notify the Board of its intention to appeal within 10 business days from receipt of the resolution memorializing the technical committee's decision. The Board shall hear appeals in public session at regularly scheduled or special meetings announced in compliance with the Open Public Meetings Act (see N.J.S.A. 10:4-6 et seq.).

- (b) For each hearing, the Site Improvement Advisory Board shall designate, by simple majority of the members present, a voting member of the Board to serve as presiding officer.
- (c) Any documents and materials constituting the appeal shall be available for public inspection at the Department of Community Affairs, Division of Codes and Standards during normal business hours at least 10 days before the date of the hearing. Other documents, records, or testimony may be produced at the hearing to clarify or supplement materials previously submitted.
- (d) The hearings shall be informal. Rules of evidence shall not apply, but the presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence.
- (e) The testimony of all witnesses in a waiver appeal shall be under oath or affirmation and shall be recorded verbatim either mechanically or stenographically. Transcripts may be obtained at the expense of the requesting party and shall be certified by the transcriber to be accurate.
- (f) The Site Improvement Advisory Board shall render a final decision within 10 days of the hearing. The Board's decision shall be in writing, and shall contain findings and conclusions. The Board shall mail a copy of the decision to the developer and to the municipal approving authority.

5:21-3.5 Special Area Standards

- (a) The Commissioner and the Site Improvement Advisory Board as a matter of policy recognize the need for preservation and/or enhancement of community character in New Jersey municipalities. This section is intended to provide a procedure whereby a municipal approving authority may develop and recommend to the Board supplementary and/or alternative standards in the form of municipal ordinances for review and amendment to this chapter. The Site Improvement Advisory Board shall solicit the input of the Department of Environmental Protection, the Office of State Planning, and the Department of Transportation and may solicit input from public or private organizations and individuals as it deems appropriate during the process of review of special area standards.
- (b) A special area designation may be applied by ordinance by a municipality or group of municipalities to an area or areas of a municipality or municipalities exhibiting or planned to exhibit a distinctive character or environmental feature that the municipality or municipalities by ordinance have identified and expressed a desire to preserve and enhance. Examples of a special area may include:
 - 1. Designated redevelopment areas pursuant to N.J.S.A. 40A:12A-1 et seq.;
 - 2. Designated special improvement districts pursuant to N.J.S.A. 40:56-65 et seq.;
 - 3. Designated historic districts pursuant to N.J.S.A. 40:55D-65.1;
 - 4. Municipalities in the Metropolitan Planning Area (Planning Area 1), and Regional Centers, villages, hamlets, or other Centers identified by the State Development and Redevelopment Plan or designated by the State Planning Commission;
 - 5. Infill areas in urban settings;

6. Planned unit developments and planned unit residential developments, and residential clusters pursuant to N.J.S.A. 40:55D-39;
 7. Areas where environmental systems such as watersheds may require special environmental controls;
 8. Designated scenic corridors, pursuant to the Intermodal Surface Transportation Efficiency Act or other similar State or local initiatives; and
 9. Rural preservation areas including but not limited to designated Agricultural Development Areas, pursuant to N.J.S.A. 4:1C, and in support of the rural preservation policies of the State Development and Redevelopment Plan.
- (c) The Site Improvement Advisory Board shall consider at its regular or specially scheduled public meetings special area standards submitted for approval by or on behalf of a municipality or municipalities. The following procedures shall govern the review of special area standards submitted for approval:
1. Upon receipt of an application for approval of special area standards conforming to (e) below, the Department of Community Affairs, on behalf of the Board, shall prepare and file with the Office of Administrative Law, for publication in the *New Jersey Register*, a notice of receipt of the application, including a summary of its contents. Any such notice shall conform to the requirements applicable to petitions for rules set forth at N.J.A.C. 5:2-2. The notice shall indicate the time and place of any meeting that is to be held to consider the application, and shall also indicate the address and telephone number at which persons may contact the Department in order to be placed on lists that the Department shall use to keep interested persons informed as to the status of any specific application or of special area standards applications generally.
 - i. The application shall be accompanied by proof of publication by the municipality, in its official newspaper, of either a copy of the application or a summary of its contents. If the municipality does not publish the full text of the application, it shall include in the published notice a statement that interested persons may review a copy of the application that is on file in the office of the municipal clerk, and may purchase copies of the application in accordance with the New Jersey Right-to-Know law, N.J.S.A. 47:1A-1.1 et seq., and that information concerning the date of any meeting at which the application will be considered will be available in the office of the municipal clerk once that determination has been made.
 2. Upon receipt of an application for approval of special area standards, the Department, with the concurrence of the Chair of the Board, shall refer the application to the appropriate Board committee. The committee shall consider the application at a meeting held at least 15 days following publication of notice of the application in the *New Jersey Register*. Notice of such meeting shall be sent to the municipal clerk and to all known parties in interest. The committee shall recommend such action to the Board as it may deem appropriate.
 3. A notice of the action recommended by the committee, including the text of any recommended special area standards, shall be forwarded by the Department to the Office of Administrative Law for publication in the *New Jersey Register* as a public notice. The notice, copies of which shall be sent to the municipal clerk and to all known parties in interest, shall include the time and place of the meeting of

the Board at which the application and the committee's recommendations thereon shall be considered.

- i. Upon receipt of the notice, the municipality shall publish a copy of the notice in its official newspaper.
 4. Prior to making a decision on any application for special area standards, the Board shall hold a public hearing at which all interested persons shall be given an opportunity to testify and to present their views, both orally and in writing. A taped record shall be made of all statements made at the hearing, which record shall be made available by the Department to interested persons upon request. At the conclusion of the hearing, the Board shall either take action on the application or schedule the matter for further consideration at its next meeting. Any Board decision shall be by formal resolution. Notice of any Board decision shall be published in the *New Jersey Register*.
 5. The Board and any of its committees shall meet at least monthly when any application for approval of special area standards is ripe for action before them.
- (d) The Site Improvement Advisory Board shall review special area standards submitted for approval if:
1. The special area is delineated on the zoning map, adopted redevelopment plan, special improvement district ordinance, Center designation petition, or other duly authorized ordinance of the municipality or municipalities;
 2. The special area is incorporated into the municipality's master plan;
 3. Site improvement standards for use in the special area are consistent with the purposes of this chapter, deviations from the standards are identified, and a rationale is provided for each such deviation; and
 4. Site improvement standards for use in the special area are set forth in an ordinance or draft ordinance that has been referred to the Board for approval by resolution of the municipal governing body. Municipalities may submit their existing codes and plans to satisfy these requirements provided, however, that no ordinance setting forth special area standards shall be effective unless and until it is approved by the Board.
- (e) The application of the municipality for Site Improvement Advisory Board approval of its special area standards shall consist of:
1. A resolution of the governing body as described in (b) above;
 2. The standards;
 3. A copy of the ordinance, or of the draft ordinance and supporting resolution, adopting the standards;
 4. An identification and narrative rationale for the deviations from the standards of this chapter; and
 5. Any maps, exhibits, or supporting documentation.

- (f) Developers, nonprofit groups, and other agencies may submit applications for special area status on behalf of municipalities if duly authorized by the municipal governing body.
- (g) The Site Improvement Advisory Board's decision on municipal special area standards shall be rendered in writing.
- (h) The Site Improvement Advisory Board shall incorporate into its annual review of this chapter a review of approved municipal special area standards and shall recommend to the Commissioner any appropriate changes in the rules [N.J.S.A. 40:55D-40.4(d)].
- (i) The Site Improvement Advisory Board may approve or deny, in whole or in part, special area standards submitted for consideration by a municipality or municipalities.
- (j) The Site Improvement Advisory Board's review is limited in scope to those areas within its purview pursuant to N.J.S.A. 40:55D-40.4, that is streets, off-street parking, water supply, sanitary sewers, and stormwater management in the context of residential development.
- (k) The Board's review of a municipal special area standards ordinance shall be based on the following criteria. Standards set forth in an ordinance submitted for review by the Board:
 - 1. Shall be consistent with the intent of the Site Improvement Act,
 - 2. Shall be reasonable and not unduly burdensome,
 - 3. Shall meet the needs of public health and safety, and
 - 4. Shall take into account existing infrastructure and surrounding development possibility.
- (l) A developer whose application is complete on or before the date of approval of a special area standard shall have the option of complying with that standard or complying with the standard in effect prior to the date of approval of the special area standard.

5:21-3.6 Agreement to Exceed Standards

- (a) A standard set forth in these rules may be exceeded when both the developer and the municipal approving authority agree that such exceeding of a standard is desirable under the specific circumstances of a proposed residential development.
- (b) Any agreement between a developer and a municipal approving authority to exceed a standard set forth in these rules shall be placed in writing by the developer.
- (c) The developer shall transmit forthwith to the Department notification of each agreement with a municipal approving authority to exceed any of the standards set forth in these rules.
- (d) The Department shall review each agreement between a developer and a municipal approving authority wherein they mutually agree to exceed a standard otherwise set forth in the Residential Site Improvement Standards. Each such agreement shall be reviewed for consistency with the intent and purpose of the Act and these rules.

- (e) The Department shall apprise the Site Improvement Advisory Board periodically of all agreements to exceed the standards, together with a summary of the review described in (d) above for each such agreement.

5:21-3.7 Public Meetings

All meetings of the Board and of its committees shall be conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq. The Department shall provide copies of meeting schedules, in accordance with N.J.S.A. 10:4-19, to any persons requesting such copies. Any such copies shall include a summary of the matters to be discussed at the meeting. Requests for such copies may be sent to the Secretary of the Site Improvement Advisory Board, Division of Codes and Standards, Post Office Box 802, Trenton, NJ 08625-0802.

5:21-3.8 Changes to the Standards

- (a) The Site Improvement Advisory Board shall annually review the standards and recommend changes, as the Board deems necessary.
- (b) As part of its annual review of the standards, the Site Improvement Advisory Board shall consider any suggested changes to the rules that are submitted by the public provided they are submitted prior to January 1 of the year in which they are to be considered. Suggested changes received on or after January 1 shall be considered during the following calendar year. Committee members may introduce other changes to the rules at the time that the committee is considering recommendations from the public. Suggested changes shall be submitted on a standard form available from the Department (reproduced at the back of this book).
- (c) The Site Improvement Advisory Board shall provide an opportunity for proponents of suggested changes and other interested parties to testify before the Board at a regularly scheduled or special meeting of the Board. A public notice with the time, date, and place of this meeting shall be published in the *New Jersey Register* at least two weeks prior to the scheduled meeting date.
- (d) The Chair of the Site Improvement Advisory Board shall assign each suggested change to the appropriate committee of the Board for its review and recommendation.
- (e) The committees shall make a recommendation to the Site Improvement Advisory Board on each suggested change that was submitted. The recommendations of the committees shall be made available to any interested party at least two weeks prior to the meeting at which the Board will vote on the suggested changes.
- (f) At a regularly scheduled or special meeting, the Site Improvement Advisory Board shall vote on each suggested change. A simple majority of the Board shall be sufficient for the proposal to be submitted to the Commissioner with a recommendation that it be published in the *New Jersey Register* as a proposed rule change.